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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 ALFONSO MONTALVO,
a/k/a/ Jose Portillo

17 Defendant.
18
19

No. 08-70321 PVT

STIPULATION AND [PROPOSED]
ORDER EXCLUDING TIME UNDER
RULE 5 AND THE SPEEDY TRIAL ACT

SAN JOSE VENUE

20
21 On June 19, 2008, the undersigned parties appeared before the Court for a preliminary
22 hearing and arraignment. Assistant Federal Public Defender Manuel Araujo served as counsel for
23 the defendant. The parties then requested that the arraignment be rescheduled for July 24, 2008
24 at 9:30 am, in order to afford Mr. Araujo an opportunity to review the discovery in the case,
25 consult with the defendant, and consider a possible disposition. The defendant, through Mr.
26 Araujo, agreed to waive time under Rule 5 of the Federal Rules of Criminal Procedure and the
27 Speedy Trial Act from June 19, 2008 to July 24, 2008. The parties agree and stipulate that an
28 exclusion of time is appropriate based on the defendant's need for effective preparation of

1 counsel.

2 SO STIPULATED:

JOSEPH P. RUSSONIELLO
United States Attorney

4 DATED: 6/19/08

/s/
SUSAN KNIGHT
Assistant United States Attorney

6 DATED: 6/19/08

/s/
MANUEL ARAUJO
Counsel for Mr. Montalvo

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9 Accordingly, the Court HEREBY ORDERS that the preliminary hearing or arraignment is
10 continued to July 24, 2008 at 9:30 a.m. Good cause is shown and the continuance is proper
11 under Rule 5 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3060.

12 For good cause shown, the Court FURTHER ORDERS that time be excluded under the
13 Speedy Trial Act from June 19, 2008 through July 24, 2008. The Court finds, based on the
14 aforementioned reasons, that the ends of justice served by granting the requested continuance
15 outweigh the best interest of the public and the defendant in a speedy trial. The failure to grant
16 the requested continuance would deny defense counsel reasonable time necessary for effective
17 preparation, taking into account the exercise of due diligence, and would result in a miscarriage
18 of justice. The Court therefore concludes that this exclusion of time should be made under 18
19 U.S.C. §§ 3161(h)(8)(A) and (B)(iv).

20 SO ORDERED.

22 DATED: _____

RICHARD SEEBORG
United States Magistrate Judge

